

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN THE MATTER OF THE)	No. 64900-1-I
PERSONAL RESTRAINT OF:)	
)	DIVISION ONE
TONY PENWELL,)	
)	UNPUBLISHED OPINION
Petitioner.)	
)	FILED: May 17, 2010

PER CURIAM. Tony Penwell filed a personal restraint petition seeking relief from the no contact order provisions contained in the judgment and sentence entered on his conviction of assault in the first degree, rape in the second degree, unlawful imprisonment, felony harassment and tampering with a witness.¹ The sentencing court imposed lifetime no contact orders with Penwell's children, and a lifetime restriction on contact with any other child unless supervised by a responsible adult aware of Penwell's offenses.

Penwell argues that the orders imposed by the trial court infringe upon his due process rights and his constitutional right to parent his children. The State argues that the circumstances for at least some of the no contact orders in this case bear a closer resemblance to the order relating to an adult witness upheld in State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008) than the no contact orders regarding a defendant's children, which were struck down in State v. Ancira, 107 Wn. App. 650, 27 P.3d 1246 (2001), which Penwell cites. However, our Supreme Court's

¹ Other claims in the petition have previously been resolved by separate order of the court. The facts of Penwell's offenses were set forth in this court's unpublished opinion affirming Penwell's conviction on direct appeal, are well known to the parties, and need not be repeated here.

recent opinion in In re Pers. Restraint of Rainey, No. 81244-6, 2010 WL 817389 (Mar. 11, 2010), issued after Penwell's sentencing, now makes it clear that the trial court must expressly engage in a considered balancing of the competing interests involved in the imposition of such orders. Because the record does not reflect the required consideration of the necessity for the orders imposed here, both as to scope and as to duration, as well as the possibility for less intrusive means to accomplish the proper goals of protecting Penwell's children and other children in the future, the case must be remanded for resentencing as to the no contact orders imposed by the court. Rainey, 2010 WL 817389 at ¶ 15.

The personal restraint petition is accordingly granted as to Penwell's challenge to the no contact provisions of his judgment and sentence and the case is remanded to the trial court for resentencing with respect to those provisions only.

For the court:

Leach, A.C.J.

Dyer, C.J.

Schneider, J.